

DOCKET NO. 98-624-E/W/S - ORDER NO. 1999-307

IN RE: Generic Proceeding Related to Sub-Metering) ORDER RULING ON
of Electric, Water and Wastewater Services.) GENERIC DOCKET
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This matter comes before the Public Service Commission of South Carolina (the Commission) on a generic proceeding for the consideration of submetering in the water/wastewater and electrical areas. After proper notice, a number of intervenors elected to participate. We deemed it appropriate to hold a hearing to gather as much information as possible on the topic in an attempt to formulate policy in an area that has many ramifications for consumers of water/wastewater and electricity.

A hearing commenced on this matter on March 3, 1999 at 10:30 AM in the offices of the Commission, with the Honorable Philip T. Bradley, Chairman of the Commission, presiding. The Commission Staff (the Staff) was represented by F. David Butler, General Counsel and Jocelyn Green, Staff Counsel. The Staff presented the testimony of A.R. Watts and Charles Creech. As for intervenors, the Richard E. Jacobs Group, Inc. (Jacobs) was represented by James R. Allen, Esquire. Jacobs presented the testimony of James W. Patterson and Charles F. Gwinn. South Carolina Electric & Gas Company (SCE&G) was represented by Patricia Smith, Esquire and Catherine Taylor, Esquire. SCE&G presented the testimony of Sharon M. Jones. National Submetering and Utility Allocation

Association (NSUAA) and National Water and Power (NWP) were both represented by John F. Beach, Esquire. Both of these intervenors presented the testimony of William Griffin. Duke Water Systems and Duke Power appeared and were represented by Richard L. Whitt, Esquire and Jeff Griffith, Esquire. The water system presented the testimony of J. Michael Snow and Duke Power presented the testimony of Barbara G. Yarbrough. The South Carolina Energy Users Committee (SCEUC) was represented by Daniel B. Lott, Jr. SCEUC presented no witnesses. Carolina Power & Light (CP&L) was represented by William F. Austin, Esquire and Len S. Anthony, Esquire. CP&L presented the testimony of G. Reece Dillard. The South Carolina Public Service Authority (Santee Cooper) was represented by Steven R. Pelcher, Esquire. Santee Cooper presented no witnesses. The Consumer Advocate for the State of South Carolina (the Consumer Advocate) also appeared and was represented by Elliott F. Elam, Jr., Esquire. The Consumer Advocate presented no witnesses. The South Carolina Department of Health and Environmental Control (SCDHEC) presented the testimony of David Price. The Limited, Inc. presented the testimony of Jonathan T. Swann. B.J. Wilkinson was present on behalf of the Intervenor Steven D. Bell & Company. The Intervenor American Energy Services, Inc. was not present nor was it represented by counsel. David W. Raynolds, a public witness, appeared and testified.

We have considered all of the testimony of all of the witnesses in this matter, and have concluded that it is very difficult to reach any finite conclusions as to regulatory policy on submetering under the present state of the utility law in South Carolina.

Submetering is done when the particular service (water/wastewater or electricity) is metered through a master meter, and the service is then split off into different sub-units, such as apartments or retail outlets in a shopping center. The owner of the apartment complex or shopping center may decide to meter the usage of each individual unit by way of an additional meter. An offshoot of this practice was also considered in this case. This consisted of a master-metered shopping center allocating electric charges to individual stores by means of a calculated formula. See the testimony of public witness David W. Raynolds at Tr. 1 at 15.

Certainly, the topic of submetering must be examined on the basis that very different definitional statutes come into play when considering water and wastewater on the one hand, and electricity on the other. S.C. Code Ann. Section 58-5-10(3)(Supp. 1998), in the water, wastewater, and gas portion of the utility code, defines a “public utility” as “...every corporation and person furnishing or supplying in any manner...water, sewerage collection, sewerage disposal to the public, or any portion thereof, for compensation.” A literal interpretation of this statute would classify any entity that sells water and/or provides wastewater services for compensation as a public utility. It appears to the Staff that landlords and companies that submeter and bill tenants (customers) for water and/or wastewater are “public utilities” under this definition. See testimony of Staff witness Charles A. Creech at Tr. 1 at 91. Duke Water Systems agrees with this proposition, and presently has resale tariffs that would allow resale to water districts, public utility firms, or corporations located on the Company’s water mains. See testimony of Michael Snow at Tr.1 at 217. Witness William Griffin of NSUAA and NWP

opposes treatment of submeterers, either water/wastewater or electricity, as public utilities for policy reasons. Griffin believes regulation would lead to less utilization of submetering, and therefore, fewer persons would realize the benefits of that service. See Griffin testimony at Tr.2 at 12. Griffin summarizes the benefits of submetering as the promotion of water conservation, less wastewater treatment plant usage, and allowing landlords to concentrate on renting space and not worry about the utilities. Tr. 2 at 13. David Price of SCDHEC testified that under its regulations, any reseller of water is considered to be a separate public water system for compliance with the Safe Drinking Water Act. See testimony of Price at Tr.2 at 112.

It appears to this Commission that any entity that sells water or provides wastewater services for compensation is a public utility, including submeterers. We believe that landlords and companies that submeter and bill tenants for water and/or wastewater services are indeed public utilities, and should be certificated by this Commission. We understand Mr. Griffin's assertions, but hold that it is in the public interest to declare submeterers as public utilities. A good reason for this holding is the Gray complaint matter referred to at the hearing. See, e.g. Testimony of Griffin, Tr. 2 at 54. The Gray complaint showed that the submetering company, NWP, had actually estimated a portion of the usage. Further, the amount of usage was in dispute, and was difficult to determine. The Company also measured only water coming out of the water heater, and developed its allocation on that basis, a methodology which has not heretofore been approved by this Commission. Also, the toll-free number proffered by the Company for customer complaints was apparently not working on the day of the

hearing. We think that these specific problems could have been better addressed by the Company, if that Company was a regulated utility.

In our opinion, the submetering of water and wastewater cries out for regulation. We regret to say that the record before us does not contain enough information to set up specific rules. Therefore, we order that a rulemaking proceeding be established so that we may determine specific requirements for certification of submeterers and regulation of them in general.

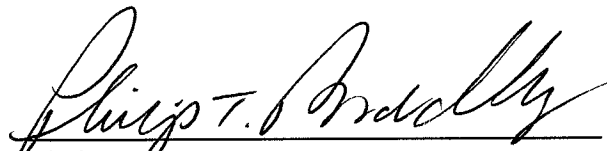
With regard to the submetering of electricity, S.C. Code Ann. Section 58-27-10 (1976) defines an “electrical utility” as “...persons and corporations, their lessees, assignees, trustees, receivers or other successors in interest owning or operating in this State equipment or facilities for generating, transmitting, delivering or furnishing electricity...to or for the public for compensation; but it shall not include...a person, corporation or municipality furnishing electricity only to himself or itself, their residents, employees or tenants when such current is not resold or used by others.” Staff quotes a similar regulation in its testimony. See testimony of Staff witness Watts at Tr. 1 at 37. Watts notes the ambiguity present, but recommends specific exemptions from submetering regulation, including those who would merely pass the cost of the electricity through to the submetered customer. Tr. 1 at 38. Jacobs witness Patterson testified that this Commission, in his opinion, had no jurisdiction over the landlord-tenant submetering situation, since there was a specific exclusion in the statutory language. See Patterson testimony at Tr.1 at 124. Various tenants, however, believe that the Commission should

regulate landlord-tenant submetering and/or allocation by formula of electricity. See testimony of Swann, Tr.2 at 134, Raynolds testimony, Tr. 1 at 15.

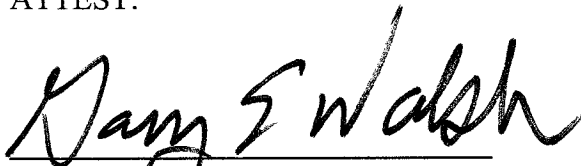
Therefore, we believe that there are a number of questions that remain about the submetering of electricity and its progeny, the master-metered shopping center which bills each store within the shopping center according to a formula method. We note that there is a pending complaint which embodies the second situation, i.e., The Limited, Inc. against The Richard E. Jacobs Group, Inc. We also believe that a further development of the facts in that case will aid us in developing a policy for the submetering of electricity, and its progeny, as described above. Therefore, we will hold our decision on those matters in abeyance until some time after we hear the complaint of The Limited, Inc.

This Order shall remain in full force and effect until further Order of the Commission.

BY ORDER OF THE COMMISSION:


Chairman

ATTEST:


Executive Director

(SEAL)